

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WOLVERINE PROCTOR & SCHWARTZ,
INC. and GREAT AMERICAN
ALLIANCE INSURANCE CO., INC.

Plaintiffs,

v.

XYZ TAPE CORP., FORMERLY
KNOWN AS PATCO CORP., WILLIAM
B. WILBUR AND TRAVELERS
PROPERTY CASUALTY COMPANY OF
AMERICA,

Defendants.

DOCKET NO: 04-12189RWZ

DEFENDANTS, XYZ TAPE CORP. AND WILLIAM B. WILBUR'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, and in accordance with Local Rule 7.1, the defendants, XYZ Tape Corp. (XYZ Tape) and William B. Wilbur ("Wilbur"), hereby move that this Honorable Court enter summary judgment in their favor as to all counts asserted in the Complaint by plaintiffs, Wolverine Proctor & Schwartz, Inc. ("Wolverine") and Great American Alliance Insurance Co., Inc. ("Great American").

This litigation concerns a claim for indemnification by Wolverine and its insurer, Great American, against XYZ Tape relating to a subrogation action brought by The Travelers Indemnity Company of Illinois against Wolverine. As grounds for this motion, XYZ Tape and Wilbur state: (1) the plaintiffs' action against XYZ Tape is barred by ch. 7-1.1§7.-1.1-98 (repealed effective July 1, 2005) and RI ch. 7-1.2§7.-1.2-1324 (effective July 1, 2005), (2)

plaintiffs failed to state a claim upon which relief may be granted; (3) plaintiffs' claims against Wilbur are moot; and (4) this Court lacks personal jurisdiction over Wilbur.

In further support of this motion, XYZ Tape and Wilbur refers the Court to the Memorandum of Points and Authorities with Exhibits, Statement of Facts and Affidavit of William B. Wilbur filed herewith and further states there is no genuine issue of material facts in dispute and this Court must enter summary judgment in favor of the defendants as a matter of law.

WHEREFORE, the defendants, XYZ Tape Corp. and William B. Wilbur, respectfully request that this Honorable Court enter judgment in their favor on all claims in the Complaint, together with such other relief as the Court deems just and proper.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), XYZ Tape Corp. and William B. Wilbur request oral argument on this motion, but waives this request if the Court grants summary judgment in their favor without a hearing.

XYZ TAPE CORP., FORMERLY KNOWN
AS PATCO CORP., and
WILLIAM B. WILBUR,

By their attorneys,

/s/ Judith A. Leggett

Lee Stephen MacPhee, BBO #312400

Judith A. Leggett, BBO#635346

MORRISON MAHONEY LLP

250 Summer Street

Boston, MA 02210

(617) 439-7500

E-mail: jleggett@morrissonmahoney.com

Date: June 28, 2005

CERTIFICATE OF SERVICE

I certify that this document has been served upon all counsel of record in compliance with F.R.C.P.

/s/ Judith A. Leggett

Judith A. Leggett